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Jurisdictional Responsibilities for Land Resources, Land Use and
Development in the Yukon Territory and Northwest Territories

Other Yukon Territory Federal Lands

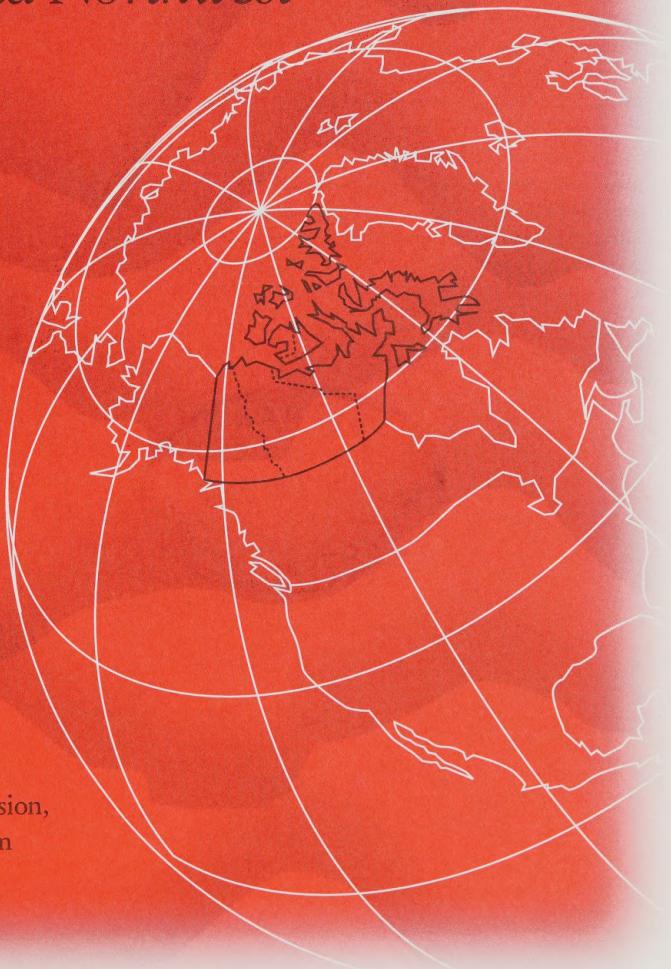


Canada

Jurisdictional Responsibilities
Book Four

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Jurisdictional Responsibilities for Land Resources, Land Use and Development in the Yukon Territory and Northwest Territories



Land Management Division,
Northern Affairs Program

November 13, 1997

The Federal Government through the Minister of Indian Affairs and Northern Development is responsible for administering territorial lands and its resources in the Yukon Territory and the Northwest Territories through various Acts, including the *Territorial Lands Act*, and Regulations, *Yukon Waters Act*, *Canada Petroleum Resources Act*, *Yukon Placer Mining Act*, *Yukon Quartz Mining Act*, etc. Through the Land Claim process, jurisdictional responsibility over certain lands, resources and land uses has been transferred to various First Nations and to Aboriginal groups across the North.

In order to provide a clearer understanding of the jurisdictional framework that is evolving in the Yukon Territory and Northwest Territories, this set of guidelines has been prepared by the Land Management Division concerning "Jurisdictional Responsibilities for Land, Resources, Land Use and Development in the Yukon and Northwest Territories". These guidelines consist of eight (8) chapters, each chapter describes the jurisdictional regime of a particular geographic region and provides the answers as to which governing bodies should be consulted when making application for specific surface and sub-surface leases, permits, licences, or claims, etc.

Michael Fish, Head of Land Transactions, directed and coordinated the compilation of the guidelines which were written by Bill Biggs and edited by Allan Macartney. Bill Biggs is a lawyer having worked as a Director, Treasury Board Secretariat, implementing federal government policies, legislation and reform in the area of real property management. Allen Macartney is a professional writer and editor having over eighteen years of research and writing experience.

Ian Sneddon
Chief, Land Management Division
Environment and Renewable Resources Directorate
Northern Affairs Program
DIAND



This document recognizes the former managers of land resources in both territories and Ottawa, and their staffs, who contributed so much towards the solid framework for land resource management that exists in the North. Their names follow:

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IMPORTANT NOTE TO USERS

This document has been prepared for convenient reference only. It has no official sanction. For all purposes of interpreting and applying the law, and the land claims agreements, consult the Acts passed by Parliament and the land claim agreements themselves.

Published under the authority of the
Minister of Indian Affairs and
Northern Development
Ottawa, 1998

QS-8574-003-EE-AI
Catalogue No. R34-7/4-1998E
ISBN 0-662-26952-7

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Services Canada

Cette publication peut aussi être obtenue
en français sous le titre :

*Partage des compétences en matière de ressources
foncières et d'utilisation et d'aménagement des
terres au Yukon et dans les Territoires du Nord-Ouest –
Autres terres fédérales au Yukon – Publication n°. quatre*

Dramatic changes have occurred over the past fifteen years in the jurisdictional framework for land resources, land use and development in the Yukon Territory and the Northwest Territories. These changes are primarily a result of:

- federal legislation revisions;
- the impending creation of Nunavut;
- the finalization of Aboriginal land claim agreements; and
- the devolution of responsibilities from the federal to the territorial governments.

Jurisdictions will further change as these initiatives continue.

Jurisdictional responsibilities are described in this document as of August 31, 1996 for land resources, land use and development within the territories concerning:

- federal lands; and
- lands confirmed for Aboriginal groups under land claim agreement settlement legislation.

These responsibilities differ in some respects between the territories. Within each territory the responsibilities vary based on the particular land claim agreements involved. These variations are considered through the chapters of this document.

In each chapter, the jurisdictional regime for a particular geographic region are described, based on territory, then on the land claim agreements. For convenience, this document combines similar land claim agreements in the chapters relating to the Yukon First Nations and the Northwest Territories First Nations. Differences between the individual land claim agreements are noted where appropriate.

Each chapter dealing with land claim settlement areas, begins with a section on the settlement agreement. This section also describes the roles of administrative bodies (such as surface rights boards) established through the settlement agreements.

The second section of each chapter provides an overview of the region's general jurisdictional categories based on federal and Aboriginal land ownership. For example, there are three categories of land in the Yukon First Nation settlement areas in the Yukon Territory:

1. Settlement Lands to which the First Nations received title under their Land Claim Settlement Agreements;
2. Reserves under the *Indian Act*; and
3. Federal lands.

The remainder of each chapter analyses each region's land ownership categories. For the categories relating to settlement lands and federal lands, the jurisdictional regime is discussed under the following headings:

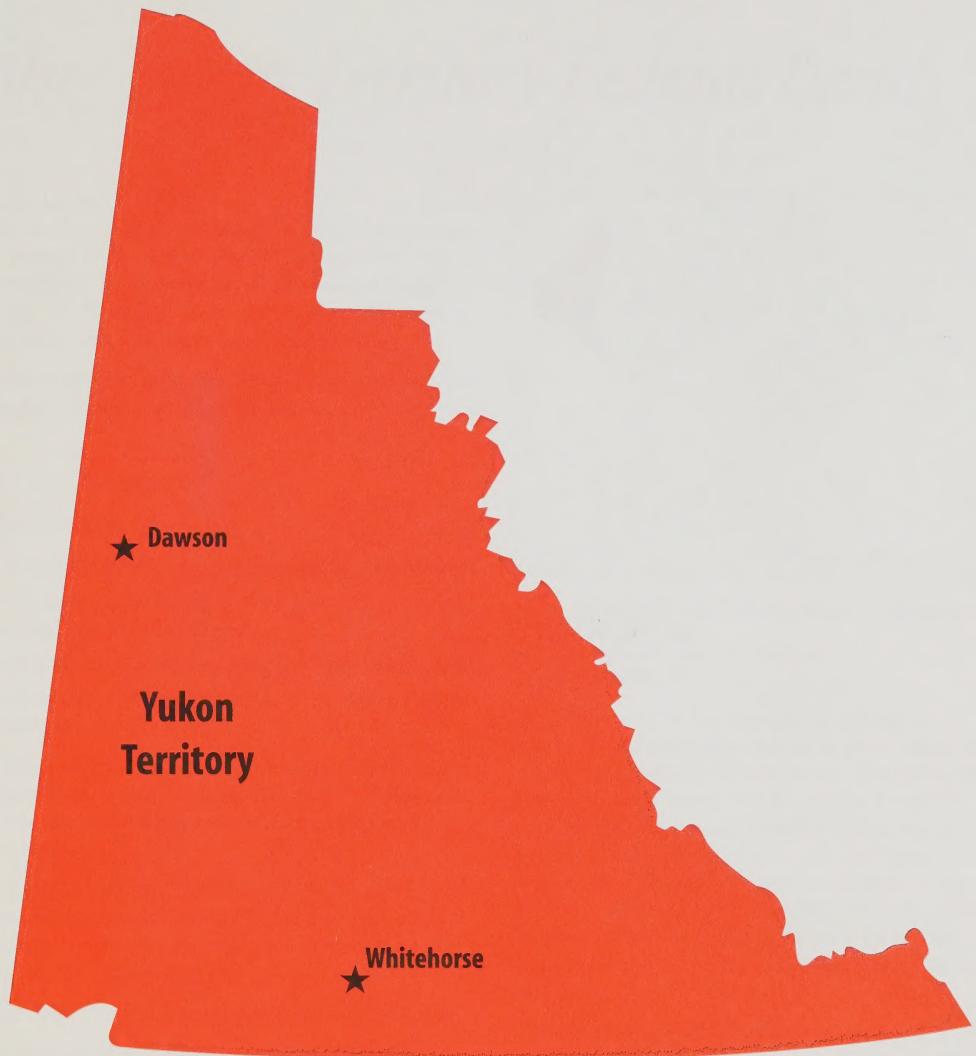
- Land Ownership;
- Land Use;
- General Access Rights;
- Non-Renewable Resources;
- Forestry and Plants;
- Water Use and Waste Deposit;
- Fish and Wildlife;
- Environmental Assessment; and
- Economic Development.

Note: Discussion of lands on reserves under the *Indian Act* is minimal. This text does not specifically examine lands administered by the territorial commissioners, nor does it discuss privately owned lands, or lands acquired by First Nations outside of the land claim settlement process.

Appendix A lists the legislation and the finalized land claim agreements examined in the preparation of this text. Legislation and land claim agreements are current as of August 31, 1996.

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Other Yukon Territory Federal Lands



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Other Yukon Territory Federal Lands

Notes and Legend

This chapter deals with the remainder of federal lands in the Yukon Territory. These lands are outside the Yukon First Nation Settlement Areas, lands under Yukon Transboundary Agreement, and the Inuvialuit Settlement Region. (Chapters 1 through 3 deal with these latter three areas of lands.)

Note: This document does not discuss reserves under the *Indian Act*, and Commissioner's lands.

4.1 LAND OWNERSHIP

4.1.1 GENERAL

The lands may be divided into three jurisdictional categories:

1. Federal lands administered by the Minister of Indian Affairs and Northern Development;
2. Federal lands administered by other federal Ministers; and
3. Federal lands owned or administered by agent Crown corporations.

The Minister of Indian Affairs and Northern Development administers most federal lands in this area. The Northern Affairs Program of the department is responsible for managing these lands.

The exceptions (under the *Department of Indian Affairs and Northern Development Act*) include federal lands in the Yukon Territory and Northwest Territories administered by another Minister prior to October 1, 1966.

The Minister of Canadian Heritage administers national parks.

The Minister of Public Works and Government Services administers all federal lands not specifically under the administration of another Minister.

Agent Crown corporations (such as Canada Post) administer a small amount of land in this area.



4.2 LAND USE

4.2.1 GENERAL

The *Territorial Lands Act* governs (in general) land use activities on federal lands administered by the Minister of Indian Affairs and Northern Development. The Territorial Land Use Regulations under that Act require permits for certain activities. Sale and leasing of these lands are governed primarily by the *Territorial Lands Act* and the Territorial Lands Regulations. However, the sale and leasing of certain offshore areas (administered by the Minister of Indian Affairs and Northern Development) are governed by the *Federal Real Property Act* and the Federal Real Property Regulations under that Act.

The sale and leasing of federal lands administered by other federal Ministers are governed by specific legislation or the *Federal Real Property Act* and the Federal Real Property Regulations under that Act. However, the *Territorial Lands Act* governs the use and disposition of lands administered by the Minister responsible for the *Northern Pipeline Act*.

Specific legislation and Part X of the *Financial Administration Act* governs the sale and leasing of federal lands owned or administered by agent Crown corporations.

4.2.2 TERRITORIAL LANDS ACT

The *Territorial Lands Act* provides for a comprehensive regime for the use, disposition and protection of lands in the Yukon Territory and the Northwest Territories administered by the Minister of Indian Affairs and Northern Development. It also applies to lands administered by the Minister responsible for the *Northern Pipeline Act*.

The *Territorial Lands Act* specifically does not affect operations under the *Yukon Quartz Mining Act*, the *Yukon Placer Mining Act*, the *Dominion Water Power Act* or the *National Parks Act*.

Under the *Territorial Lands Act*, the Governor in Council has comprehensive powers over territorial lands. These powers include the right to:

- establish land management zones for protecting the ecological balance or physical characteristics, and establishing regulations for using their surface lands;
- set apart and appropriate territorial lands for public purposes;
- authorize the acquisition of territorial lands for rights-of-way by railways, power companies or pipeline companies;
- regulate timber cutting in the Yukon Territory;
- authorize and regulate the disposition of territorial lands; and
- regulate mining rights leasing, with compensation to surface rights holders.

The Governor in Council may also withdraw territorial lands from disposal. Please note: The Governor in Council has restricted the disposal of various lands in the Yukon Territory pending the anticipated settlement of land claims, and the development of future national parks.

The Act allows for instruments called “notifications.” These can be used to grant territorial lands, equivalent to grants by letters patent. The Act also contains various restrictions on selling and leasing lands, including a list of reservations to be included in grants of territorial lands. There is an absolute prohibition on the sale of lands suitable for muskrat farming. Restrictions also apply to federal government employees and officers, and their ability to hold any interests in territorial lands.

Trespass on territorial lands by forfeited rights holders is also covered in the Act.

Territorial Lands Act regulations include:

- the Territorial Land Regulations;
- the Territorial Land Use Regulations;
- the Canada Mining Regulations (applicable only to the Northwest Territories);
- the Territorial Coal Regulations;
- the Territorial Dredging Regulations;
- the Territorial Quarrying Regulations; and
- the Yukon Timber Regulations (applicable only to the Yukon Territory).

4.2.3 TERRITORIAL LAND REGULATIONS

These regulations, under the *Territorial Lands Act*, relate to selling and leasing territorial lands administered by the Minister of Indian Affairs and Northern Development. Under the regulations, the Minister may sell or lease these lands, with reservations additional to those in the *Territorial Lands Act* applying to leases. Special rules for grazing leases apply. The regulations limit the value of lands that can be sold on the Minister’s authorization.

Note: These regulations do not apply to lands administered by the Minister responsible for the *Northern Pipeline Act*. Such sales or leases require Governor in Council authority.

4.2.4 TERRITORIAL LAND USE REGULATIONS

These regulations (under the *Territorial Lands Act*) govern land use operations on territorial lands administered by the Minister of Indian Affairs and Northern Development. Please note that these regulations do not apply to lands administered by the Minister responsible for the *Northern Pipeline Act*. Specifically, they also do not apply to:

- timber cutting operations conducted under the Yukon Timber Regulations;

- activities relating to prospecting, staking or locating a mineral claim, unless requiring the use of equipment or material normally needing a permit under the regulations;
- activities by territorial residents in the normal course of hunting, fishing or trapping; and
- lands where the Minister holds only subsurface rights.

Operations under the *Yukon Quartz Mining Act*, the *Yukon Placer Mining Act*, the *Dominion Water Power Act* or the *National Parks Act* cannot be affected by the regulations, as noted above.

Under the regulations, special rules apply to fuel caches, excavations, water crossings, clearing of trails or rights-of-way, boundary monuments, archaeological sites, campsites, and emergencies.

4.2.5 NATIONAL PARKS ACT

The *National Parks Act* sets out the regime for establishing and managing national parks, national marine parks, and national historic parks. The Minister of Canadian Heritage administers these parks. The Canadian Parks Service is responsible for their management. The Act lists various parks, including Wood Buffalo National Park in the Northwest Territories and Alberta, and Northern Yukon National Park, Vuntut National Park and the Kluane National Park (Reserve) in the Yukon Territory. Other lands reserved for national parks in the Yukon Territory and the Northwest Territories are described in 1974 and 1988 statutes amending the *National Parks Act*.

A Wildlife Advisory Board, relating to traditional hunting grounds within Wood Buffalo National Park, may be established under this Act.

Certain regulations under the Act govern the use and operation of national historic parks. These include activities related to wildlife and domestic animals. The regulations do not list national historic parks in the Yukon Territory or the Northwest Territories.

Various regulations under the Act control activities in national parks, including building permits, business licensing, camping, domestic animals, fire protection, fishing, garbage, aircraft operations, grazing, traffic and parking, signs, leasing

and licensing of park lands, water and sewer use, resort subdivisions, and wildlife. Specific provisions relating to parks in the Yukon Territory are found in the following regulations:

- the National Park Fishing Regulations (various parks); and
- the National Parks General Regulations (Wood Buffalo, Kluane and South Nahanni).

4.2.6 NORTHERN PIPELINE ACT

This Act regulates the Alaska-Canada natural gas pipeline, and implements the Canada-United States Agreement relating to the pipeline. Under the Act, the administration of Commissioner's lands in the Yukon Territory needed for the pipeline was to be transferred to the Minister responsible for the pipeline – the Minister of International Trade.

As noted in other sections of this chapter, the Minister responsible for the pipeline has responsibilities for the application of other statutes to the pipeline.

4.2.7 AERONAUTICS ACT

This Act regulates aeronautics in Canada. While the Minister of Transport is primarily responsible for the Act, the Minister of National Defence also has certain responsibilities. Under the Act, the Governor in Council may make regulations that restrict use and development of lands adjacent to, or in the vicinity of, a federal airport. Please note that these zoning regulations apply to privately-owned land, and the Act contains provisions for entry and removal of obstructions.

The following airports in the Yukon Territory are now Commissioner's lands:

- Burwash;
- Dawson Creek;
- Faro;
- Mayo;
- Old Crow;
- Ross River;
- Teslin;
- Watson Lake; and
- Whitehorse.

4.2.8 PUBLIC HARBOURS AND PORT FACILITIES ACT

The Minister responsible for the *Public Harbours and Port Facilities Act* administers federal public harbours and port facilities not managed by a port corporation, a harbour commission, or another Minister. The Act regulates harbour and facility-related activities. The Act does not list public harbours or facilities, and the regulations do not indicate any public harbours or facilities in the Yukon Territory.

4.2.9 FISHING AND RECREATIONAL HARBOURS ACT

This Act regulates the use, management and maintenance of certain harbours in Canada; it is administered by a designated federal Minister. The Fishing And Recreational Harbours Regulations relate to activities at these harbours. No harbours in the Yukon Territory are currently under this Act.

4.2.10 HISTORIC SITES AND MONUMENTS ACT

The Minister of Canadian Heritage may establish and administer historic museums and sites under this Act. The Historic Sites and Monuments Board of Canada advises the Minister on establishing and administering historic museums and places.

4.2.11 YUKON ARCHAEOLOGICAL SITES REGULATIONS

The Yukon Archaeological Sites Regulations (under the *Yukon Act*) govern activities at archaeological sites in all three jurisdictional categories. Note: Provisions also relate to archaeological sites in the *Territorial Lands Act*.

4.2.12 GOVERNMENT PROPERTY TRAFFIC ACT

The *Government Property Traffic Act* regulates traffic and parking operations on federal lands. The Government Property Traffic Regulations under the Act are based primarily on provincial traffic statutes. These regulations, however, do not apply to certain lands, including Indian reserves and territorial lands under the *Territorial Lands Act*. The Act's Airport

Traffic Regulations control traffic and parking at specified airports, including several in the Yukon Territory and Northwest Territories.

4.2.13 EMERGENCIES ACT

This Act regulates federal responses to emergencies and the compensation payable for these responses. Under the Act, government may requisition, use or dispose of real property in an emergency.

4.2.14 BRIDGES ACT

This Act regulates bridges built by any federally incorporated company. The Minister of Public Works and Government Services administers the Act.

4.3 GENERAL ACCESS RIGHTS

4.3.1 GENERAL

No legislation regulates general public access rights to federal lands in the Yukon Territory. Therefore, the common law governs these access rights. However, specific access rights are granted under various pieces of legislation relating to activities on federal lands, as mentioned in other sections of this chapter.

4.4 NON-RENEWABLE RESOURCES

4.4.1 GENERAL

The *Yukon Quartz Mining Act* and the *Yukon Placer Mining Act* govern mining activities on all three jurisdictional categories.

The *Territorial Lands Act* governs activities related to mining (other than those authorized under the above two statutes) on federal lands administered by the Minister of Indian Affairs and Northern Development. These activities may require permits under the Act's Territorial Land Use Regulations. Certain mining activities are also governed by specific regulations under the *Territorial Lands Act*. These regulations are:

- the Territorial Coal Regulations;
- the Territorial Quarrying Regulations; and
- the Territorial Dredging Regulations.

Petroleum activities are governed by the *Canadian Petroleum Resources Act* and the *Canada Oil and Gas Operations Act*. Regulations under the now-repealed *Canada Oil and Gas Act* still apply as long as they are consistent with the *Canadian Petroleum Resources Act*.

4.4.2 YUKON PLACER MINING ACT

The *Yukon Placer Mining Act* regulates placer mining of gold and other precious minerals or stones. Under the Act, an individual may enter, locate, prospect and mine for minerals using the placer mining method on any Yukon Territory lands. However, various lands are excepted, including national parks, lands occupied for placer mining purposes, lands administered by the Minister of National Defence, and lands occupied by a building or dwelling-house. The Yukon Surface Rights Board may resolve disputes, and security and compensation may be payable.

The Governor in Council may by order prohibit entry for placer mining on certain lands required for a public purpose, such as land claim settlements. Various of these orders have been made.

Owners of placer claims have certain water and drainage rights. An arbitration board established under the Act may resolve disputes. The Act also provides a claim holder with certain rights relating to fish and wildlife harvesting, timber cutting, and building a residence on the claim.

The Territorial Land Use Regulations of the *Territorial Lands Act* do not apply to operations under the *Yukon Placer Mining Act*.

Certain amendments to the Act, passed by Parliament but not in force as of December 31, 1996, impose a land use and reclamation regime. This includes a licensing system on placer mining, and takes into account socio-economic and environmental values.

4.4.3 YUKON QUARTZ MINING ACT

This Act regulates mining “in place” for precious and base minerals. Under the Act, an individual may enter, locate, prospect and mine for minerals on:

- any vacant territorial lands in the Yukon Territory; and
- any lands in the Yukon Territory where the right to enter, prospect and mine for minerals is reserved to the Crown.

Various lands are excepted under the Act. These include:

- national parks and defence lands;
- lands occupied for mining purposes;
- Indian reserves;
- land valuable for water-power purposes or under cultivation without consent; and
- land occupied by a building or dwelling-house without consent.

Security and compensation may be payable, and the Yukon Surface Rights Board may resolve disputes.

A mineral claim holder under the Act has certain rights to access the claim; the Yukon Surface Rights Board may resolve disputes. A holder also has certain water rights specified under the Act. These rights and other rights under the Act will be altered by certain amendments passed by Parliament, but not in force as of December 31, 1996. The amendments impose a land use and reclamation regime (including a licensing system) on quartz mining, and take into account socio-economic and environmental values.

The Territorial Land Use Regulations under the *Territorial Lands Act* do not apply to operations under the *Yukon Quartz Mining Act*.

4.4.4 TERRITORIAL COAL REGULATIONS

Under the *Territorial Lands Act*, these regulations govern coal exploration and mining on federal lands administered by the Minister of Indian Affairs and Northern Development in the Yukon Territory and the Northwest Territories. Land exceptions include:

- municipal lands;
- Indian reserves;
- lands reserved for national parks, game sanctuaries, and military or other public purpose;
- lands reserved under the Dominion Water Power Act; and
- lands lawfully occupied for mining purposes.

Special rules apply to lands where the surface rights are owned or lawfully occupied by another. In addition, the regulations allow Aboriginal peoples in isolated portions of the territories to take, with permission, small quantities of coal.

4.4.5 TERRITORIAL QUARRYING REGULATIONS

These regulations (under the *Territorial Lands Act*) govern the taking of sand, gravel and other granular materials from federal lands in the territories. The Minister of Indian Affairs and Northern Development administers them. The regulations describe the regime for permits, leasing, staking, fees and royalties. Special rules allow residents of the Yukon Territory and the Northwest Territories to take certain quantities of sand, gravel, stone and loam for their personal use.

4.4.6 TERRITORIAL DREDGING REGULATIONS

These regulations (under the *Territorial Lands Act*) allow the Minister of Indian Affairs and Northern Development to issue leases for the exclusive right to dredge for minerals in submerged river beds in the Yukon Territory and the Northwest Territories. “Minerals” means precious and base minerals; peat, clay, sand and gravel are excluded.

These regulations set out the system for staking leased property and for paying fees and royalties. The regulations allow dredging lease holders to cut some timber for dredging operations. Dredging operations must not interfere with the general public right to navigation. Special rules govern conflicts between:

- operations under the dredging regulations; and
- activities of claim holders under the *Yukon Placer Mining Act*.

4.4.7 CANADIAN PETROLEUM RESOURCES ACT

This Act regulates the issuance of petroleum interests, and the licensing for petroleum exploration, production and subsurface storage:

- in federal lands in the Yukon Territory;
- in federal lands in the Northwest Territories; and
- in submarine areas not within the territories, out to the 200 mile limit.

The Ministers responsible for the Act are the Ministers of Natural Resources and of Indian Affairs and Northern Development, for the natural resources which they administer respectively. The Act does not affect constitutionally protected Aboriginal and treaty rights, or any rights under the Inuvialuit Final Agreement.

Under the Act, the issuance of interests and petroleum-related activities, can be prohibited on specified lands or in certain circumstances (such as emergencies). Any lands withdrawn or set aside under the *Territorial Lands Act* are deemed to be prohibited under the Canada Petroleum Resources Act.

The Canada Oil and Gas Land Regulations, made under the now-repealed *Canada Oil and Gas Act*, continue in effect until new regulations are made, unless they conflict with the *Canada Petroleum Resources Act*. These regulations include provisions relating to entry on federal lands by persons holding petroleum licences, permits and leases.

Regulations made under the *Canada Petroleum Resources Act* relate to:

- environmental research in regions, including several in the Yukon Territory and the Northwest Territories (the Environmental Studies Research Fund Regions Regulations);
- royalty calculations (the Frontier Land Petroleum Royalty Regulations); and
- the registration of petroleum interests (the Frontier Lands Registration Regulations).

4.4.8 CANADA OIL AND GAS OPERATIONS ACT

This Act regulates exploration and drilling for production, conservation, processing and transportation of oil and gas in the Yukon Territory, the Northwest Territories and in Canadian submarine areas. The Act is intended to promote:

- safety;
- environmental protection;
- oil and gas conservation; and
- joint production agreements.

The Ministers responsible for the Act are the Ministers of Natural Resources and of Indian Affairs and Northern Development, and for the natural resources they respectively administer.

Under the Act, the National Energy Board (or its delegate) may issue petroleum-related operating licences, or authorize related works and activities, and impose terms and conditions on them. Specific provisions apply relating to entry on lands for petroleum exploration and for activities related to an operating licence. Some of these provisions do not apply to First Nation lands in the Yukon Territory.

The Act also sets up an Oil and Gas Committee for inquiries, hearings and appeals.

Various regulations under the Act relate to different aspects of oil and gas operations, including installations, diving, drilling, spills and geophysical operations.

4.4.9 CANADA-YUKON OIL AND GAS ACCORD IMPLEMENTATION ACT (PROPOSED)

Note: This legislation was before the House at the dissolution of Parliament in April, 1997.

The summary attached to this Bill reads as follows:

"This enactment implements provisions of the Canada-Yukon Oil and Gas Accord. Under the Accord, the Government of Canada has agreed to transfer to the Yukon Government both administrative and legislative jurisdiction over oil and gas in the Territory and an adjoining area. The enactment amends the *Yukon Act* to confer power to make laws in relation to oil and gas analogous to the power of a province. The granting of oil and gas interests can be restricted on Crown lands required for federal government purposes and designated by the Governor in Council as such. The administration and control of oil and gas transferred to the Yukon Government could be taken back by the Government of Canada if necessary for the settlement of an Aboriginal land claim."

Amendments are made to federal laws relating to oil and gas in consequence of the transfer of jurisdiction to Yukon authorities. Transitional provisions apply to the disposition of pending applications under federal laws and to the treatment of existing oil and gas interests under Yukon laws."

4.5 FORESTRY AND PLANTS

4.5.1 GENERAL

Timber activities on federal lands administered by the Minister of Indian Affairs and Northern Development, are governed by the *Territorial Lands Act*. The Yukon Timber Regulations under that Act require permits for certain timber cutting and removal activities.

The *Federal Real Property Act* regulates leasing and licensing for timber activities on federal lands administered by other departments.

4.5.2 YUKON TIMBER REGULATIONS

These regulations of the *Territorial Lands Act* govern the cutting and removal of timber on lands in the Yukon Territory administered by the Minister of Indian Affairs and Northern Development. The regulations do not apply to:

- persons who have a long-term timber harvesting agreement with the minister under section 4 of the *Territorial Lands Act*;
- certain personal cuttings for fuelwood and Christmas trees; and
- certain cuttings by permit holders under the Territorial Land Use Regulations.

The regulations set out the terms and conditions applicable to activities of the timber permit holders. They also allow for seizure and sale of unlawfully cut timber.

4.6 WATER USE AND WASTE DEPOSIT

4.6.1 GENERAL

The *Yukon Waters Act* and its Water Regulations govern water use and the deposit of waste in water in all three jurisdictional categories. The Yukon Territory Water Board issues licences for water activities.

Migratory Bird Regulations, under the *Migratory Birds Convention Act*, 1994, deal with oil waste deposits or other substances harmful to migratory birds in any waters or area frequented by these birds. Please see 4.7.3 for more information.

Various provisions and regulations of the Fisheries Act relate to fish habitat protection and pollution prevention in Canadian waters. Please see 4.7.3 for more information.

4.6.2 YUKON WATERS ACT

This *Act* came into force on June 15, 1993. It replaces the *Northern Inland Waters Act* for the Yukon Territory. References to the former Act in legislation are deemed to be references to the new Act, and licences issued under the *Northern Inland Waters Act* continue to remain in force.

Under the *Act*, no person shall use waters in a water management area, or deposit waste in any waters, except in accordance with a licence or the regulations issued under the *Act*. The *Act* defines "water" to mean all inland waters (surface or subsurface) in the Yukon Territory. This prohibition does not apply to:

- domestic users;
- instream users;
- flood or fire control uses;
- activities authorized under the *Dominion Water Power Act*; or
- in the case of waste deposit, waters included in a water quality management area established under the *Canada Water Act*, or its regulations.

The *Act* states that the property and the right to the use and flow of all waters, vests in the Crown, subject to rights granted under the *Dominion Water Power Act*.

The Yukon Territory Water Board (established under the *Act*) ensures conservation, development and use of waters in a way that provides optimum benefit for all Canadians, and particularly for Yukon Territory residents. The Board may issue licences for water use and waste deposit. Special rules exist for licences issued for lands within a water quality management area under the *Canada Water Act*.

The *Act* gives a limited expropriation right to water licence applicants. This right does not apply in the Yukon Territory to settlement land or Tetlit Gwich'in Yukon land.

For the protection of waters or other reasons, the Governor in Council can prohibit the disposition of lands administered by the Minister of Indian Affairs and Northern Development.

The Governor in Council (under the regulations) established these Yukon Water management areas:

- the Liard, Alsek, Peel and Porcupine Rivers, as well as their tributaries and river basins;
- the Yukon River, its tributaries and river basins and their tributaries (including the Tanana River); and
- all other waters and river basins of the mainland draining into the Beaufort Sea or into the Mackenzie River, as well as Herschel Island.

These regulations allow the use of water and deposit of waste in these areas without a licence if certain criteria are met, or with a licence otherwise.

4.6.3 NAVIGABLE WATERS PROTECTION ACT

The *Navigable Waters Protection Act* regulates certain activities that could interfere with navigation on waterways, such as putting up structures (including cables), dumping fill, or excavating material. The *Act* also regulates obstacles or obstructions on navigable waters. The *Act* prohibits (in certain circumstances) depositing of various materials, including sawdust, rubbish, stone, and gravel, into navigable waters or waters flowing into them. Regulations under the *Act* relate to bridges, ferry cables and works on navigable waters. The Canadian Coast Guard in the Department of Fisheries and Oceans administers the *Act*.

4.6.4 CANADA WATER ACT

The *Canada Water Act* sets up water resource and quality management regimes in certain waters in Canada. Contact the Department of Environment (which is responsible for the Act) with any questions concerning which lands would fall under one of these regimes.

4.6.5 DOMINION WATER POWER ACT

This Act regulates “water-powers” (essentially any energy that may be commercially produced by flowing or falling water) on federal lands. A licence issued under this Act includes all lands (including transmission lines) required for developing or working of the water-power. The Minister of Indian Affairs and Northern Development is responsible for this Act.

Note: For some time, licences under the *Northern Inland Waters Act* (or its successors: the *Yukon Waters Act* and the *Northwest Territories Waters Act*) have been used for developing hydro-electric power in the territories. However, long-term licences issued under the *Dominion Water Power Act* may still be in force.

4.6.6 ARCTIC WATERS POLLUTION PREVENTION ACT

This Act regulates:

- deposits of waste;
- any works that may deposit waste; and
- shipping safety control zones

in Canadian arctic waters, or on the mainland or islands in the Canadian arctic where waste may enter these waters. Regulations delegate certain authorities (given by the Act to the Governor in Council) to the Ministers of Transport, Natural Resources, and Indian Affairs and Northern Development.

The Arctic Waters Pollution Prevention Regulations allow for the deposit of waste in certain circumstances, with reporting requirements and limitations on liability. The Shipping Safety Control Zones Order and the Arctic Shipping Pollution Prevention Regulations relate to shipping in the arctic.

4.7 FISH AND WILDLIFE

4.7.1 GENERAL

Fish and wildlife are regulated by the *Canada Wildlife Act*, the *Migratory Birds Convention Act, 1994*, and the *Fisheries Act*.

4.7.2 CANADA WILDLIFE ACT

The *Canada Wildlife Act* generally relates to the protection of wildlife in Canada. The Department of the Environment administers the Act, although the Minister responsible for the Northern Pipeline has certain responsibilities in relation to the pipeline. The Act helps to protect endangered species, and permits the use of federal lands for wildlife conservation (including protected marine areas). The Act does not affect constitutionally-protected Aboriginal and treaty rights.

Orders in Council under the Act have assigned administration of various properties in the territories to the federal Minister of the Environment for wildlife areas. However, in some cases the Minister of Indian Affairs and Northern Development administers the subsurface rights.

The Act’s Wildlife Area Regulations regulate activities on wildlife areas; several are listed in these regulations.

4.7.3 MIGRATORY BIRDS CONVENTION ACT

The *Migratory Birds Convention Act, 1994* generally relates to the protection of migratory birds and their nests. It implements a 1916 Convention between Canada and the United States. The Act regulates hunting, possession and trade in birds and nests. The Department of the Environment administers the Act, although the Minister responsible for the Northern Pipeline has certain responsibilities relating to the pipeline.

The Act’s Migratory Bird Sanctuary Regulations establish and regulate activities at migratory bird sanctuaries. The regulations list several sanctuaries in the Northwest Territories (although none in the Yukon Territory); special rules apply to them. Note: The Minister of the Environment and the Minister of Indian Affairs and Northern Development may jointly administer some of these sanctuaries. As well, activities may be subject to both the Migratory Bird Sanctuary Regulations and regulations under the *Territorial Lands Act*.

The Act's Migratory Bird Regulations relate to the issuing of permits associated with migratory bird hunting and research. The regulations also deal with the deposit of oil wastes or other substances harmful to migratory birds in any waters or area frequented by migratory birds. Special rules apply to Aboriginal peoples and Northwest Territories residents. The regulations identify seasons and limits for areas in the Yukon Territory and in the Northwest Territories.

4.7.4 FISHERIES ACT

The *Fisheries Act* is the main federal instrument for regulating fishing in Canada. It applies to Canadian Fisheries Waters, which are defined as all waters in the fishing zones and territorial sea of Canada and Canadian internal waters. The Act regulates the fishery in all respects, including licensing, fishways, fish habitat protection, pollution prevention, marine plants harvesting, and fish propagation.

The two primary provisions for fish habitat protection deal with works or undertakings that result (or are likely to result) in:

- an alteration of fish habitat (administered by the Department of Fisheries and Oceans); or
- the deposit of a substance harmful to fish in fishery waters (administered by the Department of the Environment).

Note: One provision in the Act relates to a public right to use vacant federal lands for certain fishing activities in specified circumstances.

Numerous regulations under the Act concern specific aspects of the fishery. These regulate such areas as:

- depositing harmful substances by processing facilities, such as pulp and paper mills, metal mines, and meat or poultry product plants (various regulations);
- importing of fish or fish eggs into a province or territory (the Fish Health Protection Regulations); and
- contaminated fisheries (the Management of Contaminated Fisheries Regulations).

Regulations containing specific provisions that relate to the Yukon Territory fishery are:

- the Fishery (General) Regulations: These regulate general fishing and related activities, including quotas, closure, limits, licensing, alterations to fish habitat, and obstructions to fish passage. Some special rules relate to the fish trade by Aboriginal peoples and to activities in the territories. These general regulations can be overruled by regulations relating to specific geographic areas.
- the Aboriginal Communal Fishing Licences Regulations: These allow Aboriginal organizations to obtain communal licences to carry on fishing and related activities in waters in, and adjacent to, the Yukon Territory and the Northwest Territories. They do not apply to such activities in national parks.
- the Marine Mammal Regulations: These regulate fishing for marine mammals and related activities in Canada and Canadian Fishing Waters. Various provisions relate to the harvesting of these mammals by Aboriginal peoples.
- the Yukon Territory Fishery Regulations: These regulate fishing and related activities in waters, in and adjacent to, the Yukon Territory; they don't include national parks. The regulations contain licensing, closure and limits provisions for commercial, domestic and sport fisheries. Special rules apply for fishing by Aboriginal peoples. Administrative responsibilities are given to a territorial Minister for the freshwater fishery, and the Minister of Fisheries and Oceans for all other cases.
- the Yukon Territory Gravel Removal Order: This regulates gravel removal or displacement within specified Yukon Territory water bodies.

4.8 ENVIRONMENTAL ASSESSMENT

4.8.1 GENERAL

The *Canadian Environmental Assessment Act* regulates environmental assessments of federal lands projects.

4.8.2 CANADIAN ENVIRONMENTAL ASSESSMENT ACT

This Act sets out the regime for screening, assessing and reviewing environmental aspects of any project involving the federal government. Note: Federal involvement includes granting leases, permits or licences that enable the project to be carried out. The Act may apply to activities on or in Canadian lands, waters and airspace and to projects outside Canada which involve the federal government.

Its regulations relate to the following:

- required comprehensive studies for projects that may have significant environmental impacts. These include projects in national parks or historic sites, wildlife and migratory bird sanctuaries (the Comprehensive Study List Regulations);
- activities not relating to physical works that may require an environmental assessment. These include various activities in the territories requiring permits or licences under such legislation as the *Yukon Waters Act*, the *Northwest Territories Waters Act*, the Territorial Land Use Regulations, the Northwest Territories Reindeer Regulations, and the Yukon Timber Regulations (the Inclusion List Regulations);
- projects not requiring an environmental assessment. Note: Modifying an existing drainage structure on federal land in the Yukon Territory or the Northwest Territories may require an assessment where it would not be required in the provinces (the Exclusion List Regulations); and
- projects outside Canada (the Projects outside Canada Environmental Assessment Regulations).

4.9 ECONOMIC MEASURES

4.9.1 GENERAL

There is no legislation containing general economic measures for federal lands in the Yukon Territory.

